IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59909 of 2018

Arising Out of PS. Case No.-388 Year-2017 Thana- FATUA District- Patna

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Rajesh Kumar Agarwal @ Rajesh Agarwal Son of Late Govind Prasad Agrawal, R/o M/s Maa Tara Agency, Madhusudan Guard, K.K. Sahu Lane, Kedarnath Road, P.S.- Town, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Vivek Lilha son of Purushottam Lilha, R/O 175A, Annandpuri, Boring Canal Road, Patna-1.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Ravindra Kumar Singh
For the Opposite Party/s : Mr.Sri Sanjay Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 25-040-2019

Heard the learned counsel for the petitioner, the learned A.P.P. for the State and the learned counsel appearing for the Opposite Party No.2.

2. The present case has a chequered history inasmuch as virtually the present petition is a third attempt of the petitioner for grant of anticipatory bail in connection with Fatuha P.S. Case No. 388 of 2017 for the offence punishable under Sections 406 and 379 of the Indian Penal Code.

3. Initially, the petitioner had moved this Court by filing a bail petition bearing Cr. Misc. No. 61310 of 2017 which was disposed of by an order dated 31.01.2018 with a direction that the petitioner shall be released on provisional bail upon him surrendering before the concerned court within a period of four weeks and showing the proof of payment of Rs. 50 lacs to the opposite party no.2- i.e. the informant as also with a further direction that the balance amount of Rs. 1.50 crore shall be paid within a period of 8 months thereafter, failing which the privilege of anticipatory bail being extended to the petitioner would stand cancelled automatically. It would be relevant to reproduce the relevant portion of the aforesaid order dated 31.01.2018 passed by this Court herein below:-

> The learned Sr. counsel for the petitioner, at the very outset, submits that leaving aside the nitty-gritty of the case, the petitioner is ready to make payment of a sum of Rs. 2.00 crore for the purpose of grant of anticipatory bail apart from the sum of Rs. 25 lacs already deposited in pursuance to the orders of this Court.
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> ```The learned counsel for the opposite party no. 2 submits that a sum of Rs. 3.63 crore is outstanding.
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> The learned Senior Counsel submits that out of the said amount of Rs. 3.63 crores, a sum of Rs. 1.13 crores approx. is outstanding with opposite party no. 2 from before and a sum of Rs. 25 lacs has been paid to the opposite party no. 2 by the orders of this Court, hence the balance amount comes to a sum of around Rs. 2.25 crores which is more or less the amount which the petitioner has agreed to pay to the opposite party no. 2, hence the petitioner be directed to deposit a sum of Rs. 2 crore subject to accounting to be carried out between the parties which should be made without prejudice to any order being passed by this Court.
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> Even according to the case of the prosecution, the allegation is regarding 52,260 bags of sugar having been loaded on train rake

> from Rampur which was transported to the unloading rake point at Fatua. Thereafter, the said 52,260 bags of sugar each containing 50 kgs. of Sugar were loaded on 163 trucks however, 83 trucks reached the godown of the petitioner herein but 78 trucks went missing. The further allegation is that since the said sugar was to be delivered to the petitioner herein, there is a suspicion that the said truck were taken to the godown of the petitioner herein.
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> Having regards to the facts and circumstances of the case as also the fact that the entire allegation is purely a dispute pertaining to business transaction, I do not find any impediment in grant of anticipatory bail to the petitioner specially in view of the fact that the petitioner himself is ready to pay a sum of Rs. 2 crores, hence it is directed that the said amount may be paid within a period of 09 months from today.
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> Having regard to the facts and circumstances of the case, it is directed that the petitioner shall be released on provisional bail upon him surrendering before the concerned court within a period of four weeks from today and showing the proof of payment of Rs. 50 lacs to the opposite party no. 2. It is further directed that the balance amount of Rs. 1.50 crore shall be paid within a period of 08 months thereafter, whereafter upon showing the proof of payment of the said amount, the provisional bail of the petitioner shall be confirmed. It is further directed that the petitioner shall not be arrested for a period of four weeks from today. It is made clear that in case of any default in making payment, the present privilege of anticipatory bail being extended to the petitioner herein would stand cancelled automatically.

4. Thus, it is apparent from the aforesaid order dated 31.01.2018 that the petitioner himself had undertaken before this Court to pay a sum of Rs. 2 crore to the Opposite Party

No.2 within a period of nine months and on the basis of said averments made before this Court by the learned counsel for the petitioner, this Court had passed the aforesaid order dated 31.01.2018.

5. It appears that thereafter, the petitioner had approached this Court by filing yet another petition bearing Cr. Misc. No. 10239 of 2018 for modification of the aforesaid order dated 31.01.2018 and it was contended that invoices are required to be given by the opposite party no.2 to the petitioner herein, hence the same be directed to be handed over and in the meantime the petitioner will comply with his undertaking given by him before this Court, as recorded in the order dated 31.01.2018. However, subsequently the learned counsel for the petitioner had withdrawn the said petition since the petitioner had himself failed to comply his own undertaking, as recorded in the aforesaid order dated 31.01.2018 and, accordingly, the aforesaid petition bearing Cr. Misc. No. 10239 of 2018 was dismissed as withdrawn by an order dated 16.05.2018 passed by this Court. The petitioner, with a view to linger the proceedings, had unscrupulously filed another petition bearing Cr. Misc. No. 39432 of 2018, but the same stood dismissed as withdrawn by an order dated 04.07.2018.

6. Yet again the petitioner has mustered courage to file another petition for grant of anticipatory bail in the form of the present petition on the ground that some time be granted to the petitioner for arranging the fund and honouring the undertaking given to this Court especially since he has been able to pay a sum of Rs.1 crore to the opposite party no.2. On 10.10.2018, when the present case was taken up for hearing, the learned Senior counsel appearing for the petitioner had produced two cheques for a sum of Rs. 5 lacs, which in turn was handed over to the learned counsel for the Opposite Party No.2 and some time was sought to show bonafide on the part of the petitioner by making further payment to the opposite party no.2. However, on the next date of hearing i.e. 09.01.2019, when the case was taken up for hearing, after almost three months, nobody had appeared for the petitioner, but in the interest of justice, this Court had adjourned the present case, whereafter the present case was heard on 13.03.2019, on which date a cheque of Rs. 5 lacs was handed over by the learned counsel for the petitioner to the learned counsel appearing for the opposite party no.2 and the case was adjourned to 27.03.2019 in order to enable the petitioner to make further payments, however, on the next date of hearing i.e. 25.04.2019, the learned counsel for the petitioner again sought some time for complying with the undertaking furnished by the petitioner, as recorded by this Court in its order 31.01.2018.

7. Judging the conduct of the petitioner, this Court is of the view that the petitioner is trying to take this Court for a ride and in the process has dared to abuse the process of the Court and the fact is that the petitioner, in the garb of several petitions filed from time to time including the present one, has been buying time and lingering the matter, while enjoying interim protection from arrest, hence he deserves no further indulgence by this Court, especially in view of the fact that on account of the nature of allegations levelled against the petitioner and the petitioner's willingness to make good, the loss caused to the opposite party no.2 as also taking a lenient view of the matter, this Court had directed the petitioner to deposit a sum of Rs. 2 crores only, instead of the outstanding sum of Rs. 3.60 crore. However, in view of the facts and circumstances of the case, this Court cannot tolerate the undue advantage obtained by the petitioner by creating illusion, hence the present petition stands dismissed with a further direction to the Director General of Police, Bihar, Patna to take immediate steps for arrest of the petitioner herein.

8. The registry is directed to transmit the copy of the present order to the Director General of Police, Bihar, Patna, forthwith.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03-09-2019
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